

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 325 of 2007(L)

AGAINST THE ORDER IN IA 28/2006 IN
OS.463/2004 of ADDL.MUNSIFF COURT,KOCHI

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PETITIONER:

1. BABU, AGED 53 YEARS,
S/O.MAKKOTHA, VALATH, NAYARAMBALAM MURI,
NARARAMBALAM VILLAGE, KOCHI TALUK.
2. ASOKAN, AGED 44 YEARS,
S/O.BHAVAKUNJU, NAYARAMBALAM MURI,
NAYARAMBALAM VILLAGE, KOCHI TALUK.
3. RENUKA, AGED 46 YEARS,
W/O.BABU, VALATH, NAYARAMBALAM MURI,
NAYARAMBALAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENTS:

SUDHARMA BODHINI LOWER PRIMARY SCHOOL,
NAYARAMBALAM, REP. BY ITS MANAGER,
SRI.A.C.SWETHASWAN, S/O.CHOKI,
ARAKKAPARAMBIL, WARD NO.XI,
NAYARAMBALAM MURI, NAYARAMBALAM VILLAGE,
KOCHI TALUK.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True photocopy of the affidavit/petition in I.A.991/2005 in O.S.No.463/04 in the file of Munsiff's Court II, Cochin.

Ext.P2: True photocopy of the Advocate Commissioner's report in I.A.991/2005 in O.S.No.463/04.

Ext.P3: True photocopy of the rough sketch prepared by the Advocate Commissioner.

Ext.P4: True photocopy of the Interlocutory application in I.A.No.28/06.

Ext.P5: True photocopy of the judgment of this honourable court in W.P.(C)No.32295/06 dated 5.12.2006.

Ext.P6: True photocopy of the order in I.A.28/06 in O.S.No.463/04 of the Munsiff's Court Cochin.

Ext.P7: True photocopy of plaint in O.S.No.463/04.

// True copy //

P.A. to Judge
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K.P.BALACHANDRAN, J.

W.P.(C)NO.325 OF 2007

Dated this the 28th day of February 2007

JUDGMENT

The petitioners are the plaintiffs in O.S.463/04 on the file of the Munsiff's Court, Kochi. They moved Ext.P4 application for the issuance of a Commission to measure out the properties and to demarcate its boundary with the assistance of a surveyor. The learned Munsiff vide Ext.P6 order dismissed the said petition. The order of the Munsiff is extracted below for easy reference:

“Heard. Petition for appointment of a commissioner. Already a commissioner has filed report in the suit. That report has not been objected to so far. Moreover ample opportunity has been given for filing objection to Commission Report and taking steps in the suit. But the petition is filed only at the stage of list. The suit is in the special list of today. Above all, the suit itself stands dismissed for default in appearance of the plaintiffs. Hence this petition also dismissed. No cost.”

2. The order shows that the learned Munsiff has dismissed the suit first and then the commission application. Obviously

when the suit is dismissed, the commission application cannot but be dismissed. It is submitted by both sides that the suit which was dismissed for default has now been restored and it is pending on the file of the court below.

3. It is true that appropriate steps were not taken by the plaintiff to prosecute their suit in the proper manner at the appropriate time. But all the same the court below has not applied its mind as to the necessity or otherwise of issuing a Commission. On the other hand what is observed is that there is already a commission report and that has not been objected to so far. The said commission report is not one whereby the property has been measured and its boundary fixed. The court below has dismissed Ext.P4 application observing also that petition is filed only when the suit is in the list. The dismissal of Ext.P4 application however is also after dismissal of the suit for default. At the time of hearing, this writ petitioner even the counsel for the respondent has no quarrel that it is necessary that the boundary is put up. In as much as the suit has been restored at present it is only proper that the plaintiffs are given an opportunity to take out a commission to fix the boundaries to the

scheduled property. The order impugned in the circumstances is set aside and the court below is directed to pass appropriate orders on Ext.P4 commission application.

This writ petition is disposed of with the above directions.

K.P.BALACHANDRAN, JUDGE

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